Supreme Court, U.S.
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IN THE

Supreme Court of the United States

SUPREME OIL COMPANY,

Petitioner,

—v.—

METROPOLITAN TRANSPORTATION AUTHORITY and
NEW YORK CITY TRANSIT AUTHORITY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The United States Court of Appeals for the Second Circuit in affirming a decision by the United States District Court for the Southern District of New York decided a vital question of Federal law that has not been, but should be settled by this Court, to wit: does a claimant have the overwhelming burden of demonstrating actual prejudice in a hearing which is pervaded by substantial due process violations? Petitioner is claiming that Petitioner's procedural due process rights were violated at an Administrative Hearing where Petitioner had sought to establish that Petitioner was entitled to Federal funding reimbursement in the amount of $276,476.00 for relocation expenses under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, U.S.C. Section 4608.

PARTIES TO THE PROCEEDING

The Petitioner, Supreme Oil Company is a Delaware corporation whose principal place of business is in Englewood, New Jersey. The Metropolitan Transportation Authority and the New York City Transit Authority are the Respondents in this matter.

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6 Petitioner does not have any parent companies. Petitioner does not have any wholly owned or other subsidiary companies.

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TABLE OF AUTHORITIES

No reported cases.

REFERENCE TO THE OPINION TO BE REVIEWED

The opinion herein sought to be reviewed was rendered by the United States Court of Appeals for the Second Circuit on October 5, 1998. A timely Petition for Re-Hearing with a Suggestion for a Re-Hearing En Banc was denied on January 26, 1999.

PETITION FOR WRIT OF CERTIORARI

Pursuant to the Rules of this Court, Petitioner hereby submits a Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in the above-entitled case.

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C.A § 1254. Petitioner requests this Court to exercise its discretion as the Opinion of the Second Circuit has decided a vital issue which issue should be decided by this Court. The basis for Federal jurisdiction in the Court of first instance is 25 U.S.C. § 1332 diversity of citizenship; and 42 U.S.C. § 4601, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

STATUTES INVOLVED

Although Petitioner was denied benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC § 4608, Petitioner is not challenging this statute. Petitioner is contending that petitioner's due process rights were violated at the hearing conducted under this statute.

STATEMENT OF THE CASE

A hearing was conducted by the New York City Department of Housing, Preservation and Development (HPD) to determine whether Petitioner was entitled to receive Federal funding under the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 42 USC Section 4608.

The undisputed facts which have been uncontested by the Respondent and accepted by the lower court are that after presiding over the federal relocation hearing for a period of over five months in the capacity of Administrative Hearing Officer, the Commissioner of HPD removed such individual as Administrative Hearing Officer and appointed a new Administrative Hearing Officer to take his place. The Commissioner then appointed the removed Administrative Hearing Officer to the position of co-counsel to assist the HPD counsel in representing the respondent during the hearing.

Thus the initial Hearing Officer who conducted himself as an impartial Judicial Officer for over five months was suddenly an unexpected appointed adversary of the Petitioner who now began assisting the Respondent's counsel in the capacity as co-counsel to convince the new Hearing Officer that the Petitioner was not entitled to Federal funding under the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970. The initial Hearing Officer served in this new capacity as co-counsel representing respondent for over eighty-five per cent of the hearing.

The lower court found that the hearing was tainted by "inappropriate participation" but nevertheless held that there was no showing of a due process violation which led to any prejudice to Petitioner.

REASONS FOR GRANTING THE PETITION

It defies logic and common sense for the lower Court to have confirmed a post-hearing decision that the Petitioner did

not demonstrate an entitlement for Federal funds when the very hearing established for such purpose, which found that Petitioner was not entitled to Federal funds, was so severely tainted by the incredible unexpected development of the Respondent utilizing as its co-counsel the just removed Hearing Officer. The ethical improprieties surrounding such a situation is to say the very least contrary to the due process clause of the Fourteenth Amendment of the United States Constitution.

The Court below held that notwithstanding this "inappropriate participation", Petitioner, in order to make out a due process claim, had to have identified specific instances of actual prejudicial violation of due process. It is submitted that in a situation as above which is pervaded by ethical improprieties and admittedly "inappropriate participation" that Petitioner need not demonstrate an actual showing of prejudice. The lower Court is in effect requiring the Petitioner to identify a specific due process violation in a hearing entirely pervaded by a lack of due process. That procedure imposes so impossible a burden that it defies all constitutional logic under the framework of our Fourteenth Amendment Due Process Clause.

The Federal Courts throughout this nation give great deference to Administrative Hearings and Petitioner should not be required to demonstrate an actual showing of prejudice in a hearing pervaded with such flagrant impropriety. Hundreds of Federal administrative hearings are conducted daily throughout the United States, and these hearings must be governed by the due process clause of the Fourteenth Amendment without compromise.

CONCLUSION

The conduct of the hearing coupled with the consequences of such inappropriate conduct fly right in the face of the Fourteenth Amendment Due Process Clause. It is respectfully submitted therefore that this Court not permit such conduct, and that this Court grant the Petition for Writ of Certiorari.

Respectfully Submitted,

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